

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

SHIRLEY RADABAUGH,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	DOCKET NO: 1:20-CV-00058-JRH-BKE
)	
CLAY TURNER REALTY GROUP, LLC,)	
)	
Defendant.)	

**DEFENDANT CLAY TURNER REALTY GROUP, LLC'S RESPONSE TO THE
DECLARATION OF SHIRLEY RADABAUGH DATED JULY 7, 2021**

BACKGROUND

On July 7, 2021 Plaintiff Shirley Radabaugh filed her declaration electing statutory damages pursuant to 17 U.S.C. § 504(c) and further electing to request up to five times those damages pursuant to Order of this Court dated June 16, 2021.

Pursuant to that Order, Plaintiff was granted twenty one (21) days to make her election. Plaintiff filed her declaration on the twenty first day, to wit: July 7, 2021.

Defendant further had fourteen days to respond from any election of Plaintiff to be calculated from Plaintiff's filing of her declaration on July 7, 2021, to wit: July 21, 2021. Defendant hereby submits this response within that deadline.

Plaintiff recites facts found by this court in its review of Plaintiff's Motion for Partial

Summary Judgment in paragraphs one through six of her declaration. Defendant does not dispute any assertions made in paragraphs one through six of the declaration.

Defendant's website was created by the third-party website designer in early Spring of 2020. Defendant will rely on the tracings presented by Plaintiff for all dates and assertions made throughout. Thus, Defendant concedes that the website was created on April 21, 2021 in which the website displayed the photograph at issue on a secondary page of its larger website.

Despite her continued allegations and signed declarations before this Court that she did in fact license this photograph for commercial use, naming the URL www.fineartamerica.com, Plaintiff in her Election Declaration, states that she did not, in fact, issue or possess such licenses, but that she instead marketed prints on the aforementioned site and also sold hard copy prints at a local artisan market. *P. Decl. ¶ 9*. She further indicated that she did, in fact, offer the photo for publication to at least two other third parties for online use, but did not charge licensing fees for these sites or their uses. *Id.*

In paragraphs 10-11, Plaintiff then turns to a secondary licensing website, namely, Getty Images, to hastily attempt to produce some evidence as a basis for her claim for statutory damages. She produced one image from the website "in the amount of \$2315.00 for use in an editorial style article intended to indirectly promote a product or service [in] the United States up to three years duration in the industry of travel or tourism. *Id.*

Based upon this amount of \$2315.00, Plaintiff then recognizes that she "*may* be awarded up to five (5) times the amount of the lost licensing fee." *P. Decl. ¶ 11*, emphasis added.

ANALYSIS AND ARGUMENT

1. Statutory Damages

A court determining the appropriate amount of statutory damages should consider a

number of non-exclusive factors including: “(1)the expenses the defendant saved and the profits it reaped; (2) the revenues the plaintiff lost; (3) the value of the copyright; (4) the deterrent effect on others; (5) whether the defendant’s conduct was innocent or willful; (6) whether a defendant has cooperated in providing records from which the court can assess the value of the infringing material the defendant produced; and (7) the potential for discouraging the defendant.” *Bork v. Tran Huon Quynh*, 2020 WL 4474485 at *2 (M.D. Fla. Aug. 4, 2020). Furthermore, courts must also appreciate that “statutory damages are not intended to provide a plaintiff with a windfall recovery; they should bear some relationship to the actual damages suffered.” *Clever Covers, Inc. V. Sw. Fla. Storm Def., LLC*, 554 F.Supp.2d 1303, 1313 (M.D. Fla. 2008).

Should a statutory damages amount be included and a multiplier be consider, courts should take into consideration the nature of the work and the surrounding circumstances of the work to include the special set of skills required to produce the work. For example, snapshot photography as opposed to aerial photography or microscopic photography will require a different set of skills, and thus a higher multiplier of three to seven times the damages amount would be applicable to an aerial or microscopic photographer as opposed to a snapshot photographer. *Stockfood Am., Inc. V. Fernando Arcay Special Events Corp.*, 2019 WL 9904155, at *3 (S.D. Fla. Dec. 31, 2019), *report and recommendation adopted*, 2020 WL 4820472 (S.D. Fla. Jan. 21, 2020). The nature of the photograph, for example real estate versus food, also bears consideration. Courts have found that a one-and-one-half (1.5) multiplier to be appropriate for standard real estate photography. *Stross v. Roberson*, 2019 WL 7562382 (M.D. Fla. Oct 3, 2019).

Plaintiff did, in fact, offer her print for sale on the website fineartamerica. The photograph’s print sales for \$25.00 as a print, although there are other products available to have the image placed upon, ranging in price from \$4.00 for stationary up to \$38.00 for a

puzzle. A true and correct copy of the current listing of this print on fineartamerica is attached hereto as Exhibit A.

Plaintiff also lists other prints she photographed on the same website for the same price of \$25.00. A true and correct copy of the current listings for these prints on fineartamerica is attached hereto as Exhibit B.

Defendant concedes there is a difference between hard copy prints (and subsequent usage) and that of digital media, and so turns to the image and price point presented by Plaintiff. Plaintiff presented an image with a benchmark licensing fee print out from Getty Images as Exhibit E, referenced in Paragraph 11.

The earliest the image was displayed was April 13, 2021 according to the evidence submitted by Plaintiff. Defendant, as found by this Court in its Order dated June 16, 2021, had no knowledge the image was registered and thus, subject to copyright laws. Upon the filing of this suit on April 21, 2020 and receiving summons, Defendant immediately requested the removal of the image from his website. This image had only been active for approximately one week prior to Defendant being notified of its infringing nature and was immediately removed to prevent further infringement. While Defendant recognizes he should pay for the infringement, this infringement was done unknowingly and was immediately remedied with its removal.

Plaintiff offers as a showing of her damages a benchmark license fee of \$2315.00. However, this benchmark licensing fee is for a three year duration. In reviewing the same image on the same website, Defendant presents benchmark fees which are much more aligned with Defendant's actual use of the image on its website.

The same image on Getty Images presented by Plaintiff as a digital media license, for corporate and promotional site use on a website, as a medium resolution image, on a secondary

page for up to six months for \$434.00 in the field of property/real estate. A true and correct copy of the benchmark license for six months is attached hereto as Exhibit C.

The same image on Getty Images presented by Plaintiff as a digital media license, for corporate and promotional site use on a website, as a medium resolution image, on a secondary page, for up to one year for \$479.00, in the field of property/ real estate. A true and correct copy of the benchmark license for one year is attached hereto as Exhibit D.

The same image on Getty Images presented by Plaintiff for “ONE of the following uses...,” which includes the use on “any single page in one corporate or promotional website” for up to three months is \$49.00 in the field of property/ real estate. A true and correct copy of the benchmark license for up to three months one page use is attached hereto as Exhibit E.

Defendant further wishes to show that these are standard prices and benchmark fees by showing the true and correct copies of a secondary train depot image from the same website relied on by Plaintiff by attaching the collective price points for the same usage and durations as Exhibit F.

The benchmark quotes as provided by Plaintiff were set to travel/tourism industries and not real estate/property, which is what Defendant is, a real estate agency limited liability company. While the picture was used simply to depict Aiken, South Carolina, as it is an area located in the Central Savannah River Area, Defendant’s service area, Defendant’s website is a real estate/property website. The benchmark quotes provided by Plaintiff further assumed uses of the photographs across multiple digital platforms, as opposed to just one singular use on one singular page, a secondary page, on Defendant’s website. The type of use of a photographic license, as shown in Defendant’s Exhibits C, D, and E, effects the price point greatly.

As websites and marketing are constantly changing, especially in the field of real estate,

it is not common for an active real estate company to maintain a static website. Images and content often change frequently, especially as the agencies inventory or service areas change. Taking into consideration, this website actually did change within weeks of its notification of infringement, the longest the image could have been live from the April 13, 2020 date is one to two months.

Plaintiff claimed in her pleadings and particularly her affidavit in support of her Complaint and Motion for Summary Judgment that she made the photograph available for commercial licensing through fineartamerica, in her declaration of election in Paragraphs 9 and 10 that she admits she did not ever license the photograph. Defendant's Exhibit A further demonstrates that her listing of the photograph on fineartamerica only offers prints of the photograph (which may then be ordered in various physical products such as pillows, totes, stationary, and puzzles).

Plaintiff has presented no evidence that she ever intended to license her image, despite her entitlement to do so. In fact, Plaintiff states that she willingly allowed her image to be used on at least two other commercial sites at no cost to those agencies. In her provision of those images to those third parties, she did not watermark or have those third party agencies give any indication that those images belonged to her or were copyrighted. Those third party agencies are general tourism sites for the State of South Carolina and/or the City of Aiken, which would lead a lay person not familiar with copyright law to believe they are provided by the government agencies to be readily available and useable by any member of the public.

Plaintiff failed to present any evidence about what her standard use license is or would be since there is not one in existence. As such, Plaintiff now turns to the longest and most wide use access license fee available in an effort to reap more damages from Defendant as well as relying on punitive damages. Furthermore, Plaintiff has failed to show that Defendant would

have selected a three year license, as opposed to a three month, six month, one year, or two year license, which are typical offerings for commercial use of digital images or that Defendant would have elected to use the image over multiple platforms. Defendant's actual use shows otherwise as he subsequently removed the image from his site and replaced it with a different image.

Defendant used the image on only one, secondary, page of its website for at most one to two months. The shortest license fee offered on the website suggested by Plaintiff is "up three months." As Defendant only used the image for "up to three months," Plaintiff should be entitled to the license fee offered by the website she introduced into evidence. As such, Plaintiff would be entitled to an "up to three month license fee" for the use of an image on ONE page of a commercial website. Plaintiff is entitled to the \$49.00 pursuant to the benchmark license fee presented by Defendant.

2. Statutory Damages Multiplier

Once the statutory damages amount is determined, a multiplier of that amount may be considered. Courts should take into consideration the nature of the work and the surrounding circumstances of the work to include the special set of skills required to produce the work. For example, snapshot photography as opposed to aerial photography or microscopic photography will require a different set of skills, and thus a higher multiplier of three to seven times the damages amount would be applicable to an aerial or microscopic photographer as opposed to a snapshot photographer. *Stockfood Am., Inc. V. Fernando Arcay Special Events Corp.*, 2019 WL 9904155, at *3 (S.D. Fla. Dec. 31, 2019), *report and recommendation adopted*, 2020 WL 4820472 (S.D. Fla. Jan. 21, 2020). The nature of the photograph, for example real estate versus food, also bears consideration. Courts have found that a one-and-one-half (1.5) multiplier to be appropriate for standard real estate photography. *Stross v. Roberson*, 2019 WL 7562382 (M.D. Fla. Oct 3, 2019).

Plaintiff's photograph, while a beautiful depiction of the Aiken train depot, was a normal snapshot photograph. While Plaintiff obviously possesses photographic skills, they do not rise to the level of skill required for aerial or microscopic photography. Furthermore, the nature of the work itself, a real estate photo, i.e., a photo depicting a piece of real property, has been determined by courts to only be entitled to a one-and-one-half (1.5) multiplier, if any. Therefore, Plaintiff should not be entitled to anything more than 1.5 multiplier as a base line consideration.

The award of five times, or more, the damages are meant to be used in egregious circumstances and to act punitive and prohibitory in nature and meant to apply to Defendant's who act willfully, maliciously in regards to the copyrighted material or the litigation. Defendant did not intentionally, egregiously, or maliciously utilize Plaintiff's image. The image was placed by a third party designer. Defendant had no reason to believe the image would be an infringement. However, upon notification that it was, Defendant immediately had the third party designer remove the image from its website, mitigating any further damage or potential loss of a non-existent license fee to Plaintiff. Plaintiff on the aforementioned 1.5 multiplier would be entitled to \$73.50. Should this Court choose to impose the larger multiplier, as suggested by Plaintiff, of five times the entitled to statutory damages, Plaintiff would be entitled to \$245.00 in total damages. However, 17 U.S.C. § 504(c)(1) explicitly states that statutory damages shall be awarded in a sum of not less than \$750.00. This sum would include the "five times" being requested by Plaintiff based on the actual license fees applicable to Defendant's actual use of the image.

17 U.S.C. § 504(c)(2), however, provides relief for Defendants who are innocent infringers, to wit: "[i]n a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of

statutory damages to a sum of not less than \$200.00.” Defendant, as cited by the Court in its Order dated June 06, 2021, hired a third-party contractor to build and design its website. It was Defendant’s understanding the website designer would use only unlicensed or paid-for licensed photographs in the building of the website. Plaintiff allowed the publication of her photograph on two websites which promote the City of Aiken and/or South Carolina tourism without any watermark or copyright notification, which any lay person or small business searching for images would find the image available on government and/or nonprofit websites and would not likely believe the image to be a potentially licensed photograph.

While Defendant recognizes the strict liability of copyright infringement and this Court found Fair Use inapplicable when weighing the factors, it does not dismiss Defendant’s innocence in the use of the image. Defendant was both actually unaware and had no reason to know or believe the image was copyrighted. *See*, Defendant’s Declaration, attached hereto as Exhibit G. While Defendant is a business, it is a small business in a very small town, as is the website designer. They are not large companies with large amounts of experience and training in creative arts laws. They do not have a legal team at their disposal. There was no circumstantial, nor actual evidence of the images indicating that they were licensed or copyrighted. Defendant’s position in the instant action is a position in which section 504(c)(2) was intended to apply to and, thus, should apply to.

CONCLUSION

Defendant maintains its innocence in the use of the image on its website in regards to knowing actually or circumstantially about its copyright registration status. Defendant attempted to immediately resolve the infringement by removing the image from its website upon notice that it was an infringing photograph. Plaintiff’s submitted evidence in support of her claim for statutory damages fails to show a reasonable license and use fee given the actual

use of Defendant, namely, one use of the image on one secondary page which was only tangential to his business in depicting an area local to areas it marketed real estate in at the time of infringement. Considering the minimum of statutory damages that may be awarded versus the more applicable fees as presented by Defendant in its Exhibits attached hereto, Plaintiff would be entitled to \$750.00 in damages. However, Defendant's use was innocent in nature and this Court has discretion to reduce those damages to \$200.00 due to Defendant's innocent use. As such, Defendant respectfully responds and proffers that Plaintiff, while entitled to \$750.00 per 17 U.S.C. § 504(c), the amount that should be awarded to Plaintiff is \$200.00 pursuant to 17 U.S.C. § 504(c)(2) as Defendant is an innocent infringer.

Respectfully submitted.


This 20th day of July, 2021.

/s/ Kristen T. Jones
Attorney for Defendant
Clay Turner Realty Group, LLC
Georgia State Bar Number 632847
TURNER JONES LEGAL, LLC
POST OFFICE BOX 1703
LINCOLNTON, GEORGIA 30817
(706) 359-3332

EXHIBIT A

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South Carolina: Images by Shirley Radabaugh | Wall Art / Photographs / Aiken Photographs



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1

Aiken Train Depot

The Aiken Train Depot during the blue hour after sunset.



by Shirley Radabaugh



Wall Art

\$26



Home Decor

\$25



Puzzles

\$38



Lifestyle

\$22



Stationery

\$4



Phone Cases

\$24



Beach

\$34

 Aiken Train Depot is a photograph by Shirley Radabaugh which was uploaded on August 28th, 2016.

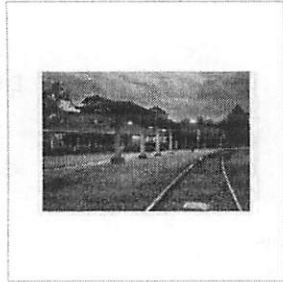
MORE FROM SHIRLEY RADABAUGH

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COMMENTS

[Post a Comment](#)There are no comments for *Aiken Train Depot*. Click [here](#) to post the first comment.

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Coffee Mugs

\$14



Face Masks

\$16



Apparel

\$16



Title

Aiken Train Depot

Artist

Shirley Radabaugh

Medium

Photograph - Photography

Description

The Aiken Train Depot during the blue hour after sunset.

Uploaded

August 28th, 2016

Statistics

Viewed 191 Times - Last Visitor from New York, NY on 07/11/2021 at 9:13 AM

Colors

Vie Vie Vie Vie

Embed

<https://fineartamerica.com/featured>[Preview](#)

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Tags

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train

train depot

locomotive

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Gig Posters
Sell Merch Online

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Photographs
Drawings
Digital Art
Mixed Media
Originals

SHOP

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Art Prints & Framed Prints
Posters
Tapestries
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Lifestyle Products
iPhone Cases
Puzzles
Apparel
Gift Cards

CREATE

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Photos to Paintings
Mail & Frame

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LOCATION SETTINGS

Beverly Hills, CA (United States)

Currency: USD (\$)

Units: Inches

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EXHIBIT B

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Home / Artists / Shirley Radabaugh



Shirley Radabaugh Shop - South Carolina

Purchase canvas prints, framed prints, and more featuring artwork from Shirley Radabaugh.

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Travel and landscape photographer. I am excited to share with you the beauty and diversity of the world I've seen through the magic of photography. When someone decides to buy one of my images and hang it in their home or office, it is one of the... [more](#)

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2012	52	39,433

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Metal Prints

Acrylic Prints

Wood Prints

Tapestries

Medium
ALLCollection
SOUTH CAROLINAShape
ALLColors
ALL**Swamp Boat Print**

Shirley Radabaugh

\$25

**Aiken South Boundary II Print**

Shirley Radabaugh

\$25

**Aiken South Boundary Avenue Print**

Shirley Radabaugh

\$25

Tags

aiken south carolina
 south boundary horse
 live oak tree spring
 canopy avenue oaks
 trees equestrian
 equine fair beaufort
 carnival ruin church
 museum ferris wheel
 water cavalry army
 street



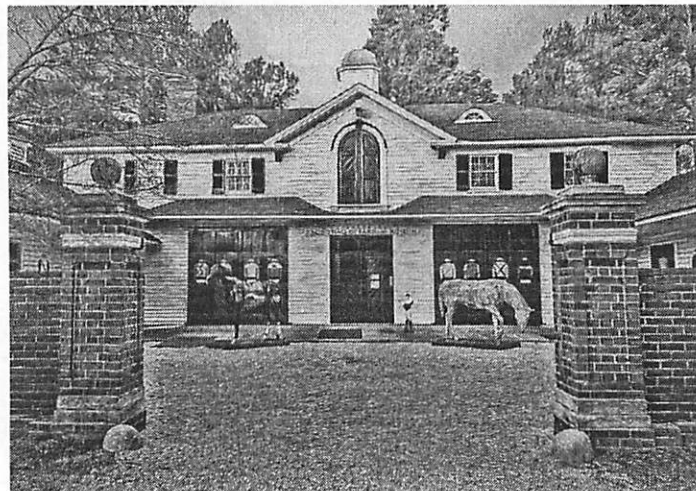
Aiken Train Depot Print
 Shirley Radabaugh
 \$25



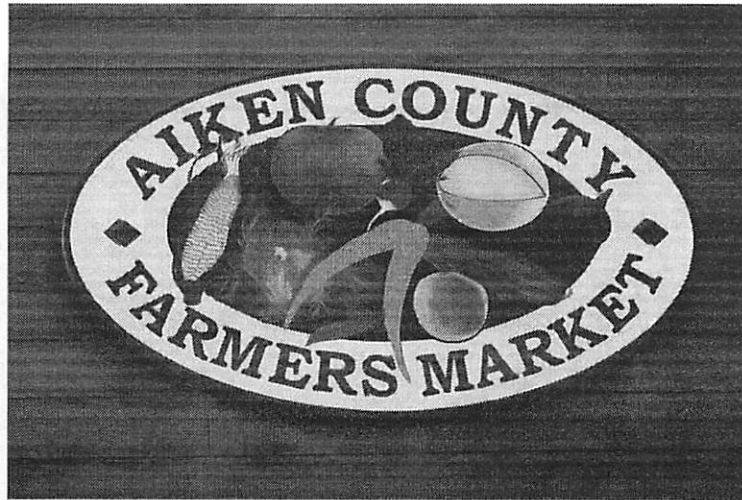
We've shipped over 1 million items worldwide for our 500,000+ artists. Each purchase comes with a 30-day money-back guarantee.



Painted Horse - Aiken Racing Hall of Fame Print
 Shirley Radabaugh
 \$25



Aiken Thoroughbred Racing Hall of Fame Print
 Shirley Radabaugh
 \$25



Aiken County Farmers Market Print
Shirley Radabaugh
\$25



Come Sit Awhile Print
Shirley Radabaugh
\$25



Have A Pepsi Print

Shirley Radabaugh
\$25



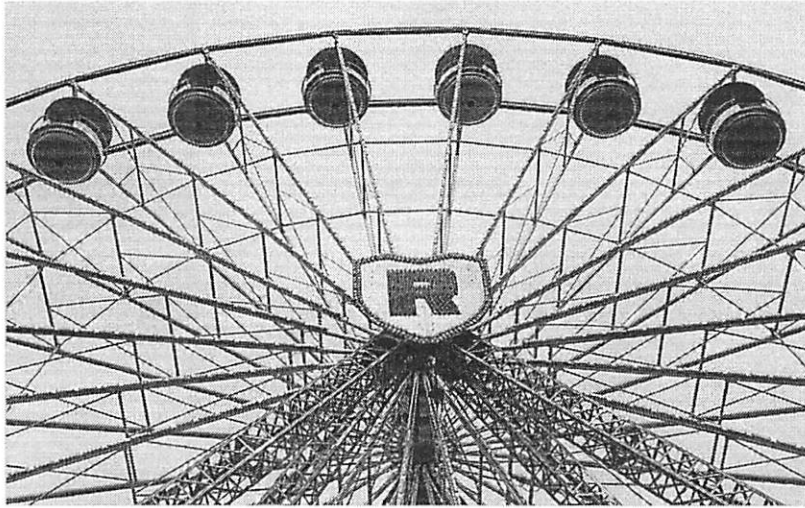
South Boundary Avenue Print
Shirley Radabaugh
\$25



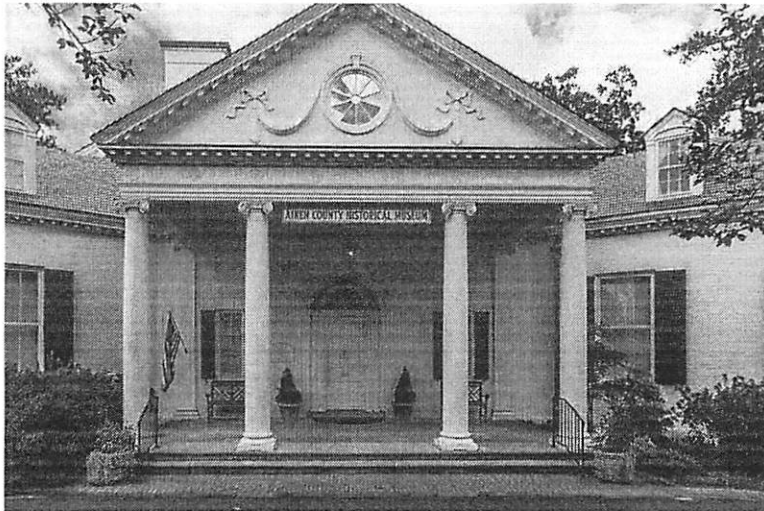
Big Wheel Print
Shirley Radabaugh
\$25



The Fair Print
Shirley Radabaugh
\$25



Ferris Wheel Print
Shirley Radabaugh
\$25



Banksia Mansion - Aiken, SC Print
Shirley Radabaugh
\$25

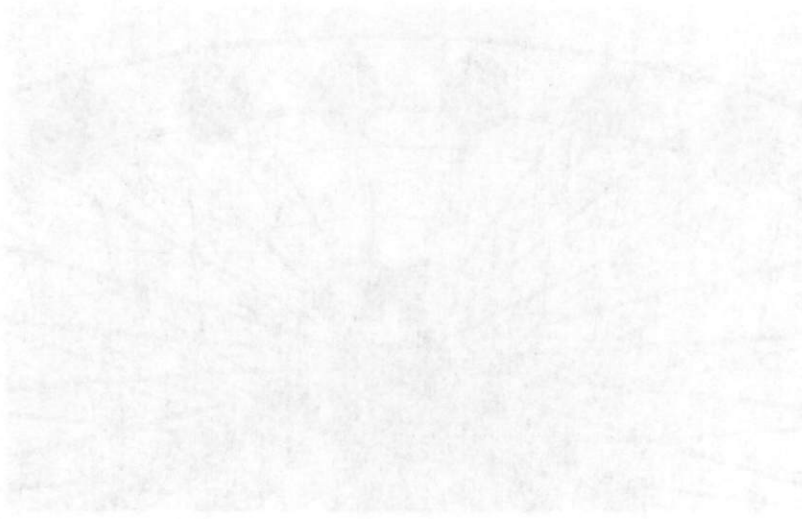




Bench with a view Print

Shirley Radabaugh

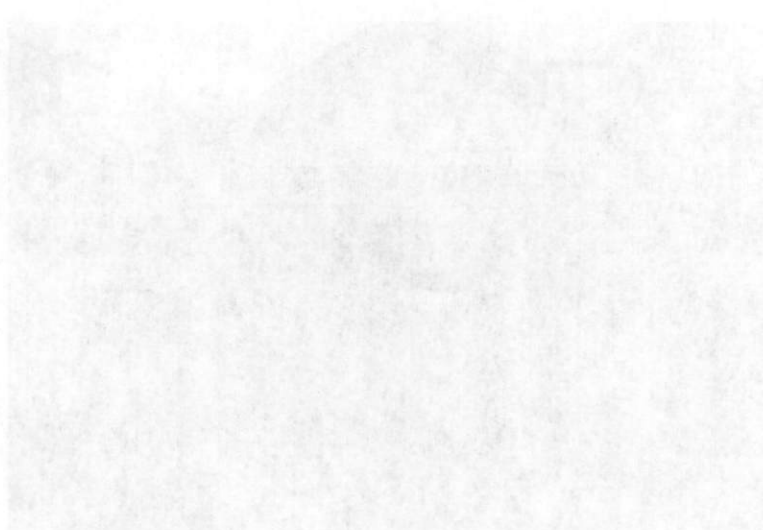
\$25



Horse and Rider Print

Shirley Radabaugh

\$25



South Boundary in Spring Print

Shirley Radabaugh

\$25



South Boundary Print
Shirley Radabaugh
\$25

Swamp Boat Print
Shirley Radabaugh
\$25

South Boundary Print
Shirley Radabaugh
\$25

Polo Print
Shirley Radabaugh
\$25

Old Sheldon Church Print
Shirley Radabaugh
\$25

Old Sheldon Church Print
Shirley Radabaugh
\$25

Old Sheldon Church Print
Shirley Radabaugh
\$25

Two Herons Print
Shirley Radabaugh
\$25

Wading Blue Heron Print
Shirley Radabaugh
\$25

Horse and Rider Print
Shirley Radabaugh
\$25

Always Ready Print
Shirley Radabaugh
\$25

South Boundary in Spring Print
Shirley Radabaugh
\$25

Dressed Rider Print
Shirley Radabaugh
\$25

Fishing Hole Print
Shirley Radabaugh
\$25

Filters Applied

✕ Collection: South Carolina

OUR COMPANY

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Blog
Videos
Wholesale Prints
Gig Posters
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Mixed Media
Originals

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Lifestyle Products
iPhone Cases
Puzzles
Apparel
Gift Cards

CREATE

Design Your Own Products
Photos to Paintings
Mail & Frame

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Sell Your Art
Membership Plans
Mobile App (iOS and Android)
Shopify App
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License summary

1. Image usage

Editorial image #: 144073996
Use: Digital Media
Format: Corporate and promotional site
This use covers: Commercial or promotional use on a website, including as a design element or branding/profile designs on Social Media. (Does not include paid advertising)

Do you want to license this image for multiple uses?

Call or email to ask about: Digital pack: web, mobile, interactive

2. Usage specs

Size: Medium resolution - Up to 300 x 250 pixels
Placement: Secondary page
Start date: 19 Jul 2021
Duration: Up to 6 months

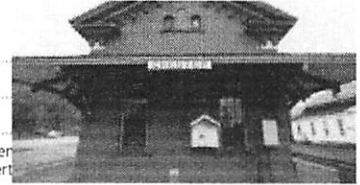
3. Target market

Territory: United States
Industry: Property / Real Estate

Start over

Item

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Editorial image #:144073996

\$434.00 USD

ADD TO CART

Taxes not applied

Questions?

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EXHIBIT D

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Use: Digital Media
Format: Corporate and promotional site
This use covers: Commercial or promotional use on a website, including as a design element, branding/profile designs on Social Media. (Does not include paid advertisement)

Do you want to license this image for multiple uses?

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2. Usage specs

Size: Medium resolution - Up to 300 x 250 pixels
Placement: Secondary page
Start date: 19 Jul 2021
Duration: Up to 1 year

3. Target market

Territory: United States
Industry: Property / Real Estate

[Start over](#)

Item

[Edit](#)



Editorial image #:144073996

\$479.00 USD

ADD TO CART

Taxes not applied

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License summary

1. Image usage

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Editorial image #: 144073996

Use: \$49 - 413 px, 3-month for Web & Mobile

Format: Commercial use of web-res file - Editorial images

This use covers: ONE of the following uses- on any single page in one corporate or promotional website for up to 3 months (renewable) OR one web advertisement on no more than one website for up to 3 months (renewable) OR one promotional email sent to no more than 10,000 recipients for up to 3 months (renewable). To purchase a license for broader use or a longer duration please select a different usage above.

2. Usage specs

[Edit](#)

Start date: 19 Jul 2021

Duration: Up to 3 months

3. Target market

[Edit](#)

Territory: United States

Industry: Property / Real Estate

[Start over](#)

Item



Editorial image #144073996

\$49.00 USD

ADD TO CART

Taxes not applied

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License summary

1. Image usage

Editorial image #: 1140422124
Use: Digital Media
Format: Corporate and promotional site
This use covers: Commercial or promotional use on a website, including as a design element, branding/profile designs on Social Media. (Does not include paid advertising)

Do you want to license this image for multiple uses?

Call or email to ask about: Digital pack: web, mobile, interactive

Editorial image #1140422124

\$434.00 USD

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Taxes not applied

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2. Usage specs

Size: Medium resolution - Up to 300 x 250 pixels
Placement: Secondary page
Start date: 19 Jul 2021
Duration: Up to 6 months

3. Target market

Territory: United States
Industry: Property / Real Estate

Start over

Price a rights-managed image

The license details are shown below. To change any of your selections, click Edit next to the section you want to change. To discard your selections and choose all new ones, click Start over.

License summary

1. Image usage

Editorial image #: 1140422124
Use: Digital Media
Format: Corporate and promotional site
This use covers: Commercial or promotional use on a website, including as a design element branding/profile designs on Social Media. (Does not include paid advertising)

Do you want to license this image for multiple uses?

Call or email to ask about: Digital pack: web, mobile, interactive

Item

Edit



Editorial image #:1140422124

\$479.00 USD

ADD TO CART

Taxes not applied

Questions?

For help with licensing an image for multiple uses, exclusivity, bulk pricing, or other products and services, contact us by email, online or phone.



Contact us



Learn more about licensing

2. Usage specs

Edit

Size: Medium resolution - Up to 300 x 250 pixels
Placement: Secondary page
Start date: 19 Jul 2021
Duration: Up to 1 year

3. Target market

Edit

Territory: United States
Industry: Property / Real Estate

Start over

Price a rights-managed image

The license details are shown below. To change any of your selections, click Edit next to the section you want to change. To discard your selections and choose all new ones, click Start over.

License summary

1. Image usage

[Edit](#)

Editorial image #: 1140422124

Use: \$49 - 413 px, 3-month for Web & Mobile

Format: Commercial use of web-res file - Editorial images

This use covers: ONE of the following uses- on any single page in one corporate or promotional website for up to 3 months (renewable) OR one web advertisement on no more than one website for up to 3 months (renewable) OR one promotional email sent to no more than 10,000 recipients for up to 3 months (renewable). To purchase a license for broader use or a longer duration please select a different usage above.

2. Usage specs

[Edit](#)

Start date: 19 Jul 2021

Duration: Up to 3 months

3. Target market

[Edit](#)

Territory: United States

Industry: Property / Real Estate

[Start over](#)

Item



Editorial image #: 1140422124

\$49.00 USD

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Taxes not applied

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EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

SHIRLEY RADABAUGH,
Plaintiff,

v.

CLAY TURNER REALTY GROUP, LLC,
Defendant.

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DOCKET NO: 1:20-CV-00058-JRH-BKE

DECLARATION OF CLAY TURNER

I, CLAY TURNER, under the penalty of perjury, declare the following to be true and correct to the best of my personal knowledge:

1. I am the owner and operator of Clay Turner Realty Group, LLC.
2. Clay Turner Realty Group, LLC is the defendant in this action.
3. I have all necessary and proper authority to submit this declaration on behalf of and as a representative of Clay Turner Realty Group, LLC.
4. I am over the age of 18 years old and competent to submit this declaration in support of my response to Shirley Radabaugh's ("Plaintiff") Motion for Partial Summary Judgment against Defendant on liability for copyright infringement under 17 U.S.C. §§ 106, 501 (Count I of the Complaint).
5. I am a licensed real estate agent in the states of Georgia and South Carolina.

6. Clay Turner Realty Group, LLC operates as a real estate agency in the states of Georgia and South Carolina.
7. Clay Turner Realty Group, LLC's principal place of business is in Lincolnton, Georgia.
8. I hired a third party business, SouthFire Web Solutions ("South Fire") to build a website for Defendant.
9. The individual that built my website is known as one Jimmy Barnett.
10. I provided a number of photographs to be placed on the website.
11. It was my understanding that SouthFire would use stock images, which required no license for each individual image use, for the creation of the website and any licensing for any content, if required, would be completed in the website construction process.
12. A website was built with the web address of www.turnerrealty.us by SouthFire and which is maintained and powered by SouthFire.
13. The local regions I market and sale real estate in are shown on the aforementioned website and are depicted by well-known landmarks in that area.
14. I market and now sale real estate in Aiken, South Carolina.
15. The train depot in Aiken, South Carolina is a well-known and often photographed landmark in Aiken, South Carolina and the image displayed on the website for my business was also located on several government and/or non-profit websites promoting tourism in Aiken, South Carolina specifically, and the State of South Carolina generally.
16. None of the uses of the image contained a watermark or any other visible indication the image was registered or licensed.

17. I had no actual or constructive notice the image was subject to a copyright license/ registration.
18. SouthFire selected and modified all images displayed on my website subject to our agreement to build the website for my company.
19. I had no knowledge prior to this lawsuit that any images utilized on the website were not stock images or images I had provided myself, or that if they were, that proper licensing had not been obtained.
20. The train depot picture was published as a depiction of Aiken, South Carolina.
21. The last certified publication date of my website prior to the filing of the lawsuit was January 2020.
22. The photograph at issue was removed from the website as soon as possible following my receipt of notification of its potential infringement on a copyright registration.

Dated: July 20, 2021

CLAY TURNER

CLAY TURNER
Owner/ Member of Clay Turner Realty Group, LLC